

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHRISTOPHER WILLIAM OLSEN,

Petitioner,

v.

JAMES KEY,

Respondent.

NO. C19-6111 BHS

APPEAL NO. 24-2230

ORDER MODIFYING  
CERTIFICATE OF  
APPEALABILITY

THIS MATTER is before the Court on remand from the Ninth Circuit for the limited purpose of issuing “a modified certificate of appealability that specifies which issue or issues satisfy the standards for a certificate of appealability under 28 U.S.C. § 2253(c)(2).” Dkt. 67.

This Court adopted Magistrate Judge Theresa Fricke’s Report and Recommendation (R&R) and denied Olsen’s § 2254 petition on each of his asserted grounds. It declined to adopt the R&R’s recommendation that the Court deny a certificate of appealability under § 2253(c)(2), because a reasonable jurist could conclude that the petition should have been resolved in a different manner or that the issues presented were

adequate to “deserve encouragement to proceed further.” Dkt. 63 at 13–14 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

The Court’s conclusion was based on the reasonable dissent of Judge Thomas R. Bjorgen, serving as a judge pro tempore for Division II of the Washington Court of Appeals, from the majority’s unpublished opinion denying Olsen’s Personal Restraint Petition. Judge Bjorgen concluded that Bryant Ward’s recantation letter warranted a new trial:

I would grant Christopher Olsen’s personal restraint petition (PRP), remand for a new trial, and require the trial court to determine the reliability of Bryant Ward’s recantation whether or not he testifies.

*State v. Olsen*, 8 Wn. App. 2d 1022, 2019 WL 1503801, at \*38 (2019) (unpublished).

This Court’s decision to grant a § 2253(c) certificate of appealability was based only on Olsen’s arguments about the reliability of Bryant Ward’s recantation, which another jurist had found persuasive. *See* Dkt. 63 at 11–14. This is the only issue in Olsen’s petition that this Court concludes satisfies the standard for a certificate of appealability, and it is the only issue to which the Court’s certificate of appealability applies.

IT IS SO ORDERED.

Dated this 3rd day of September, 2024.



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BENJAMIN H. SETTLE  
United States District Judge